IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.997 OF 2005

Madansingh Thakkur ...Petitioner

Versus

The State of Maharashtra ...Respondent

.....

Mr.V.V.Purwant for Petitioner.

Mr.V.B.Konde-Deshmukh, A.P.P. for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

APRIL 12, 2005.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Konde-Deshmukh, A.P.P. waives notice for Respondent.

3. As short question is involved, Petition is taken up for final disposal forthwith, by consent.

4. The order which is taken exception to in this Petition is passed by the Chief Judicial Magistrate, Satara dated 23rd March 2005, rejecting the Petitioner's Application for return of property.

5. Briefly stated, the stock of Gutkha (Goa Gutkha) possessed by the Petitioner came to be seized on 9th February 2005. That action was undertaken presumably on the basis of instructions issued by the Commissioner, Food and Drugs Administration, on 2nd February 2005. There is no dispute that sale of said Gutkha is banned all over Maharashtra. No person can maintain stock of the prohibited item throughout Maharashtra.

6. In the present case, however, the limited grievance of the Petitioner is that before the prohibition actually came into effect in terms of the instructions issued by the Commissioner, Food and Drugs Administration on 2nd February 2005, the entire stock of said Gutkha was received by the Petitioner from the Company on 8th February 2005 on the basis of order which was placed by the

Petitioner on 27th January 2005, much before the instructions were issued by the Commissioner. The same were seized on 9th February 2005. Whereas, under the instructions of the order issued by the Commissioner, all concerned were required to withdraw entire stock in the market unsold within a period of eight days from the date of the order i.e. on or before 10th February 2005 (eight days from 2nd February 2005) or before 15th February 2005. In other words, the maximum period provided under the instructions issued by the Commissioner for removing the stock was up to 15th February 2005 and in any case 10th February 2005 being eight days from 2nd February 2005 and in that situation, seizure on 9th February 2005 is inappropriate.

7. There is substance in the argument canvassed on behalf of the Petitioner. However, it is not possible to accede to the request of the Petitioner for return of the property to the Petitioner, as sale and storage of Gutkha has been banned throughout the State of Maharashtra.

8. The only course open in such a situation

is, to accept the prayer of Petitioner, which is modified request made before this Court through his Counsel that the concerned Department will facilitate despatch of the seized stock at the instance of the Petitioner to the manufacturing Company of said Gutkha (Goa) for being transported to Goa or such other part of India, outside Maharashtra where sale and storage of Gutkha has not been banned. The Petitioner undertakes to disburse the transport expenses, to be incurred in this behalf.

9. The Petition accordingly succeeds only to this limited extent.

10. The Authorities to take steps for despatch of the subject stock within two weeks from the request being made by the Petitioner for such despatch and upon depositing necessary transport and other incidental charges in that behalf.

11. Petition disposed of on the above terms.

A.M.KHANWILKAR, J.